

MICHIGAN PROBATE JUDGES ASSOCIATION
POSITION ON HB 5267

HB 5267 requires the court to order joint custody unless the court determines by clear and convincing evidence that a parent is unfit, unwilling or unable to care for the child or if the parent moves outside the school district of the child and cannot maintain the child's school schedule.

HB 5267 requires the court when awarding joint custody to include a statement regarding when the child would reside with each parent for specific and substantially equal periods of time.

HB 5267 also requires the court to approve any written custody arrangement agreed to by the parents.

Generally, most judges agree that joint legal and physical custody should be a starting point. However, most agree that mandatory joint custody is a mistake. Requiring proof of unfitness by clear and convincing evidence without any consideration of the best interests of the children ignores everything that research tells us about child development and attachment.

MPJA would support requiring the court to consider the possibility of joint physical custody and in the event the court finds some arrangement other than joint physical custody better serves the best interests of a child the court shall state its reasons on the record or in writing.

MPJA will not support a requirement that parental unfitness be the test for decision making or that the burden of proof be by clear and convincing evidence. Instead, the best interests of the children should be the guiding principal and the burden of proof should be by a preponderance of the evidence. Finally, MPJA will not support language that would require the court to approve any custody arrangement the parents agree to in writing.

In its present form, MPJA must oppose HB 5267.